

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

Gary Cannioto,

Plaintiff,

v.

Simon's Agency, Inc.; and DOES 1-10,
inclusive,

Defendants.

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: Civil Action No.: 6:19-cv-06686-FPG
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: **AMENDED COMPLAINT**
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For this Amended Complaint, the Plaintiff, Gary Cannioto, by undersigned counsel,
states as follows:

JURISDICTION

1. This action arises out of the Defendants' repeated violations of the Telephone
Consumer Protection Act 47 U.S.C. § 227, *et seq.* (the "TCPA").

2. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b), in that the
Defendants transact business in this District and a substantial portion of the acts giving rise to
this action occurred in this District.

PARTIES

3. The Plaintiff, Gary Cannioto ("Plaintiff"), is an adult individual residing in
Victor, New York, and is a "person" as defined by 47 U.S.C. § 153(39).

4. The Defendant, Simon's Agency, Inc. ("Simon's Agency"), is a New York
business entity with an address of 4963 Wintersweet Drive, Liverpool, New York 13088,
operating as a collection agency and is a "person" as defined by 47 U.S.C. § 153(39).

5. Does 1-10 (the "Collectors") are individual collectors employed by Simon's
Agency and whose identities are currently unknown to the Plaintiff. One or more of the

Collectors may be joined as parties once their identities are disclosed through discovery.

6. Simon's Agency at all times acted by and through one or more of the Collectors.

FACTS

7. In or around October 2018, Simon's Agency began calling Plaintiff's cellular telephone, number 585-xxx-2486, using an automatic telephone dialing system ("ATDS"), in an attempt to collect a debt from a person unknown to him.

8. When Plaintiff answered calls from Simon's Agency, he heard a prerecorded message asking to speak with "Susan Wollke" and had to wait on the line before he was connected to the next available representative.

9. Before transferring Plaintiff to a live representative, the automated system requested that Plaintiff indicate by pressing specific numbers whether or not he was "Susan Wollke" or whether she was available.

10. Plaintiff pressed the number to indicate that he was not "Susan Wollke" and also waited on the line to speak with a live representative.

11. Plaintiff spoke with a live representative and informed Simon's Agency the Debtor was unknown to him and could not be reached at his telephone number.

12. Simon's Agency assured Plaintiff it would remove his number from Simon's Agency's system.

13. Despite having informed Plaintiff it would remove his number from its system, Simon's Agency continued to place calls to Plaintiff's cellular telephone number.

14. Plaintiff spoke with a live representative again in January 2019, and reiterated his request for Simon's Agency to cease placing calls to him as the Debtor was unknown to him.

15. Nonetheless, Simon's Agency continued placing automated calls, at least sixteen

(16) times, to Plaintiff's cellular telephone number causing him a great deal of frustration and inconvenience.

Plaintiff Suffered Actual Damages

16. The Plaintiff has suffered and continues to suffer actual damages as a result of the Defendants' unlawful conduct.

17. As a direct consequence of the Defendants' acts, practices and conduct, the Plaintiff suffered and continues to suffer from humiliation, anger, anxiety, emotional distress, fear, frustration and embarrassment.

COUNT I

VIOLATIONS OF THE TCPA – 47 U.S.C. § 227, et. seq.

18. The Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully set forth herein at length.

19. At all times mentioned herein, Defendant called Plaintiff's cellular telephone number using an ATDS or predictive dialer and/or a prerecorded message.

20. Defendant's telephone system(s) have some earmarks of a predictive dialer.

21. When Plaintiff answered calls from Defendant, he heard a prerecorded message before Defendant's telephone system would connect him to the next available representative.

22. Defendant's predictive dialers have the capacity to store or produce telephone numbers to be called, using a random or sequential number generator.

23. Defendant placed automated calls to Plaintiff's cellular telephone number despite knowing that it lacked consent to do so. As such, each call placed to Plaintiff was made in knowing and/or willful violation of the TCPA, and subject to treble damages pursuant to 47 U.S.C. § 227(b)(3)(C).

24. The telephone number called by Defendant was and is assigned to a cellular

telephone service for which Plaintiff incurs charges pursuant to 47 U.S.C. § 227(b)(1).

25. Plaintiff was annoyed, harassed and inconvenienced by Defendant's continued calls.

26. The calls from Defendant to Plaintiff were not placed for "emergency purposes" as defined by 47 U.S.C. § 227(b)(1)(A)(i).

27. Plaintiff is entitled to an award of \$500.00 in statutory damages for each call in violation of the TCPA pursuant to 47 U.S.C. § 227(b)(3)(B).

28. As a result of each call made in knowing and/or willful violation of the TCPA, Plaintiff is entitled to an award of treble damages in an amount up to \$1,500.00 pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff respectfully prays that judgment be awarded in the Plaintiff's favor and against the Defendants as follows:

1. Statutory damages of \$500.00 for each violation determined to be negligent pursuant to 47 U.S.C. § 227(b)(3)(B);
2. Treble damages for each violation determined to be willful and/or knowing pursuant to 47 U.S.C. § 227(b)(3)(C); and
3. Such other and further relief as may be just and proper.

TRIAL BY JURY DEMANDED ON ALL COUNTS

Dated: June 3, 2020

Respectfully submitted,

By: /s/ Sergei Lemberg
Sergei Lemberg, Esq. (SL 6331)

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Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on June 3, 2020, a true and correct copy of the foregoing Amended Complaint was served electronically via Electronic Document Filing System (ECF) and that the document is available on the ECF system.

/s/ Sergei Lemberg
Sergei Lemberg